

MARYANN SCHULTZ, *ET VIR.*)
)
v.) NO. 2:02-CV-278
)
DIANE DAVIS, *ET AL.*)

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entered the home, without the permission of the owners or the agent of the owners. Other defendants in the case have alleged as a defense that the plaintiffs did not have permission to be on the property and that it was not foreseeable to them that the plaintiffs would be on the property. Thus, the issue of Ms. Lindamood's actions provides a potential complete defense to the defendant builders for the plaintiffs' injuries.

Ms. Lindamood claims that the discovery rule which would toll the statute of limitations is inapplicable, stating that the plaintiffs should have known of any claims they might have against Ms. Lindamood on August 7, 2002, when they were injured. To the extent the plaintiffs' theory of recovery against Ms. Lindamood is that she failed to warn them of a dangerous condition on the property, the defendant is correct; however, to the extent the plaintiffs' theory of recovery against Ms. Lindamood is based upon alleged tortious conduct by Ms. Lindawood in advising plaintiffs they had permission to enter the property, when in fact they did not, the plaintiffs were only apprised of this potential cause of action on May 27, 2004, when the plaintiffs first learned that Ms. Lindamood did not have permission to enter the premises.¹

Under the discovery rule, the cause of action is only deemed to have been discovered "when the plaintiff knows that he or she has been injured and who caused the injury." *Clifton v. Bass and Columbia Area Mental Health Center, Inc.*, 908 S.W. 2d 205

¹ The question of whether such an allegation states a valid cause of action against Ms. Lindawood under Tennessee law is not before the court at this time.

(Tenn. Ct. App. 1995). To the extent the plaintiffs have stated a cause of action against the realtor for advising them that she had obtained permission to visit the property, the plaintiffs could not have discovered that Ms. Lindamood **caused** their injuries in this manner until they learned that she was not permitted to enter the property.

Accordingly, the defendant's motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**. The plaintiffs' complaint against Ms. Lindamood is dismissed solely to the extent that it states a claim against Ms. Lindamood for her failure to warn the plaintiffs of known hazards present on the home site.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE